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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Lixiao Wang et al
Application No.: 08/685338
Filed: July 23, 1996
For: High Compliance, High Strength Catheter Balloons
Useful for Treatment of Gastrointestinal Lesions
Examiner:
Group Art Unit:

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2B-5902-US01

**PETITION TO EXPUNGE CONFIDENTIAL
INFORMATION SUMMITTED IN APPLICATION
37 CFR §1.59(b); MPEP 724.05 (I)**

Applicant requests that the documents titled "Supplement to Greg Mitchell Declaration," and "Supplement to Jeffery Bruce Declaration," filed in this application on November 5, 2004, be expunged from the file of the application.

The documents were not filed under seal in accordance with 37 CFR 1.59 and MPEP 724.02. This was inadvertent as it was believed that the applicable rule for submission of confidential information was 37 CFR §102.9, rather than §1.59. Upon further review, this belief appears to have been mistaken. Nevertheless, the documents were expressly created as submissions of confidential information exempt from public disclosure pursuant to §102.9. Therefore the applicant has notified the U.S.P.T.O. of the proprietary nature of the information included therein.

The provisions of MPEP 724.05 (I) describing the requirements for a petition to expunge information that was or should have been submitted under MPEP 724.02 are reproduced below in plain italics. The relevant information satisfying the requirements are provided in bold text.

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I. INFORMATION SUBMITTED UNDER MPEP § 724.02

A petition under 37 CFR 1.59(b) to expunge information submitted under MPEP § 724.02, or that should have been submitted under MPEP § 724.02 (as where proprietary information is submitted in an information disclosure statement but inadvertently not submitted in a sealed envelope as discussed in MPEP § 724.02) will be entertained only if the petition fee (37 CFR 1.17(h)) is filed and the information has been found not to be important to a reasonable examiner in deciding on patentability. If the information is found to be important to a reasonable examiner in deciding on patentability, any petition to expunge the information will be denied.

In the interview held on December 16, 2004, the Examiner suggested claim language revisions that would remove the basis for rejection. It is understood that this would render the specific details of the commercial process contained in the Supplement to Greg Mitchell Declaration and the details of the commercial sales contained in the Supplement to Jeffery Bruce Declaration unimportant to patentability. Applicant will submit the suggested amendment in a continuation application that will be filed as within an extended time period allowed for response to the outstanding rejection.

Any such petition to expunge information submitted under MPEP § 724.02 should be submitted at the time of filing the information under MPEP § 724.02 and directed to the Technology Center (TC) to which the application is assigned.

Timeliness is addressed later in this petition. This petition is being directed to the relevant Technology Center.

Such petition must contain:

(A) a clear identification of the information to be expunged without disclosure of the details thereof:

Supplement to Greg Mitchell Declaration, filed November 5, 2004.

Supplement to Jeffery Bruce Declaration, filed November 5, 2004.

(B) a clear statement that the information to be expunged is trade secret material, proprietary material, and/or subject to a protective order, and that the information has not been otherwise made public;

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The information in the Supplement to Greg Mitchell Declaration is trade secret material that has not been otherwise made public.

The information in the Supplement to Jeffery Bruce Declaration is proprietary material that has not been otherwise made public.

(C) a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;

The petitioner undertakes to retain the information for the period of any patent with regard to which such information is submitted

(D) a statement that the petition to expunge is being submitted by, or on behalf of, the party in interest who originally submitted the information;

This petition to expunge is being submitted on behalf of Boston Scientific Corporation, assignee of the application and the party in interest who originally submitted the information.

(E) the fee as set forth in 37 CFR 1.17(i) for a petition under 37 CFR 1.59(b).

The necessary petition fee is hereby authorized to be charged to deposit account 22-0350.

*Any such petition to expunge should accompany the submission of the information and, in any event, must be submitted in sufficient time that it can be acted on prior to the **>mailing of a notice of allowability or a notice of abandonment for original and reissue applications, or prior to the mailing of a Notice of Intent to Issue Reexamination Certificate (NIRC) for reexamination proceedings. < Timely submission of the petition is, accordingly, extremely important. If the petition does not accompany the information when it is initially submitted, the petition should be submitted while the application or reexamination is pending in the Technology Center (TC) and before it is transmitted to the Publishing Division.*

This petition timely as it is being filed before mailing of a notice of allowability or a notice of abandonment and before the application has been transmitted to the Publishing Division.

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***>If a petition to expunge is not filed prior to the mailing of a notice of allowability or a notice of abandonment for original and reissue applications, or prior to the mailing of a NIRC for reexamination proceedings, any material then in the file will remain therein and be open to the public in accordance with 37 CFR 1.14. Accordingly, it is important that both the submission of any material under MPEP § 724.02 and the submission of any petition to expunge occur as early*

as possible during the examination process. The decision will be held in abeyance and be decided upon the close of prosecution on the merits.

To facilitate the handling of this petition, it is being filed before the filing of the continuation application so there is time to conform to the provisions of *MPEP 724.02-Office Treatment and Handling of Materials Submitted Under MPEP § 724.02*. The application file and contents are not currently available to the public.

In view of the information presented herein it is submitted that the petitioner has demonstrated a proper basis for expungement from the file of the Supplement to Greg Mitchell Declaration and the Supplement to Jeffery Bruce Declaration. Accordingly it is requested that the petition be granted.

Respectfully Submitted,

VIDAS, ARRETT & STEINKRAUS

Date: December 6, 2004

By: 
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